

Assembly Bill No. 1875

CHAPTER 390

An act to add Section 1900.5 to the Corporations Code, and to amend Sections 23331 and 23334 of the Revenue and Taxation Code, relating to corporations.

[Approved by Governor September 5, 2002. Filed
with Secretary of State September 6, 2002.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1875, Nakano. Corporations: articles of dissolution.

The General Corporations Law sets forth procedures for the creation and dissolution of a corporation.

This bill would authorize the filing of articles of dissolution with the Secretary of State relative to the dissolution of a corporation that has not issued shares and would revise certain related provisions.

The people of the State of California do enact as follows:

SECTION 1. Section 1900.5 is added to the Corporations Code, to read:

1900.5. (a) Notwithstanding any other provision of this division, when a corporation has not issued shares, a majority of the directors, or, if no directors have been named in the articles or been elected, the incorporator or a majority of the incorporators may sign and verify a certificate of dissolution stating the following:

(1) That the certificate of dissolution is being filed within 12 months from the date the articles of incorporation were filed.

(2) That the corporation does not have any debts or other liabilities, except as provided in paragraph (3).

(3) That the tax liability will be satisfied on a taxes paid basis or that a person or corporation or other business entity assumes the tax liability, if any, of the dissolving corporation and is responsible for additional corporate taxes, if any, that are assessed and that become due after the date of the assumption of the tax liability.

(4) That a final franchise tax return has been filed with the Franchise Tax Board as required under the Corporation Tax Law (Part 11 (commencing with Section 23001) of Division 2 of the Revenue and Taxation Code).

(5) That the corporation has not conducted any business from the time of the filing of the articles of incorporation.

(6) That the known assets of the corporation remaining after payment of, or adequately providing for, known debts and liabilities have been distributed to the persons entitled thereto or that the corporation acquired no known assets, as the case may be.

(7) That a majority of the directors, or, if no directors have been named in the articles or been elected, the incorporator or a majority of the incorporators authorized the dissolution and elected to dissolve the corporation.

(8) That the corporation has not issued any shares, and if the corporation has received payments for shares from investors, those payments have been returned to those investors.

(9) That the corporation is dissolved.

(b) A certificate of dissolution signed and verified pursuant to subdivision (a) shall be filed with the Secretary of State. The Secretary of State shall file the certificate of dissolution without the tax clearance certificate specified in Section 23334 of the Revenue and Taxation Code and shall notify the Franchise Tax Board of the dissolution.

(c) Upon filing a certificate of dissolution pursuant to subdivision (b), a corporation shall be dissolved and its powers, rights, and privileges shall cease.

SEC. 2. Section 23331 of the Revenue and Taxation Code is amended to read:

23331. (a) For the purposes of this article, the effective date of dissolution of a corporation is the date on which the certified copy of the court decree, judgment, or order declaring the corporation duly wound up and dissolved is filed in the office of the Secretary of State or the date on which the certificate of winding up, if necessary, and the certificate of dissolution are filed in the office of the Secretary of State. For the purposes of this article, the effective date of withdrawal of a foreign corporation is the date on which the certificate of withdrawal is filed in the office of the Secretary of State.

(b) The Secretary of State shall, through an information program and by forms and instructions provided to taxpayers, recommend that all documents required by this article to be filed with the Secretary of State be sent, if mailed, by certified mail with return receipt requested. The Secretary of State shall also notify taxpayers that receipt of documents by the Secretary of State pursuant to this article will be acknowledged within 21 days of receipt.

(c) On or before 21 days after their receipt, the Secretary of State shall provide a taxpayer with acknowledgment of the receipt of documents submitted by a taxpayer pursuant to this article.

(d) The office of the Secretary of State shall, no later than July 1, 1991, submit to the Legislature a report of the development of a taxpayer



information program, the revision of forms and instructions, and the implementation of procedures for acknowledging receipt from taxpayers of documents required by this article.

SEC. 3. Section 23334 of the Revenue and Taxation Code is amended to read:

23334. No decree of dissolution shall be made and entered by any court, nor shall the Secretary of State file a decree of dissolution, or file in the case of a credit union incorporated under the California Credit Union Law a certificate of election to dissolve, or in the case of any other taxpayer file a certificate of dissolution, except as provided in subdivision (c) of Section 1905 of the Corporations Code and subdivision (b) of Section 1900.5 of the Corporations Code, or any other document by which the term of existence of the taxpayer shall be reduced or terminated, nor shall the Secretary of State file any certificate of the surrender by a foreign corporation of its right to do intrastate business in this state unless the taxpayer obtains from the Franchise Tax Board and files with the court or Secretary of State, as the case may be, a tax clearance certificate indicating that the Franchise Tax Board is satisfied from the available evidence that all taxes imposed by this chapter have been paid or are secured by bond, deposit, or otherwise. Within 30 days after receiving a request for a certificate, the Franchise Tax Board shall either issue the certificate or notify the person requesting the certificate of the amount of tax that must be paid or the amount of bond, deposit, or other security that must be furnished as a condition of issuing the certificate. The issuance of the certificate shall not relieve the taxpayer or any individual or corporation from liability for any taxes, penalties, or interest imposed by this part, nor shall the issuance of the certificate in the case of any credit union which revokes its election to wind up and dissolve, relieve that credit union of any taxes or interest that would have been imposed under this part had the election not been filed.

The Franchise Tax Board shall furnish a copy of the tax clearance certificate to the Secretary of State.

